tance of about three and one-half miles. The appellee did not state in his evidence that the weather was unpleasant or disagreable, from any cause, or that the tow-path was in bad condition, in any way; nor did he claim that he had been injured, sickened or even fatigued by his evening walk.

We need not and will not dwell upon the question; for it seems to us, that the bare statement of this matter, as the appellee has stated it in his evidence. is convincing and conclusive proof that the damages were excessive. This cause was well assigned, and for it, we think a new trial ought to have been granted. (The remainder of the opinion was upon a point not of general interest.)

Judgment reversed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
COURT OF CHANCERY OF NEW JERSEY.[2]
SUPREME COURT OF OHIO.[3]
SUPREME COURT OF ILLINOIS.[4]
SUPREME COURT OF WISCONSIN.[5]

AGENT.

Deposit in Bank—Liability for Loss.—An agent who deposits money of his principal to his own credit in a bank, without the principal's consent, takes all the risk of such deposit: *Sargeant* v. *Downey*, 49 Wis.

ASSIGNMENT. See *Vendor and Vendee.*

BANKRUPTCY

Assumption of Firm Debt by Partner—Subsequent discharge in Bankruptcy—New promise to Co-partner to pay the Debt.—Where one of two former partners is under obligations to the other to pay a partnership debt, his discharge in bankruptcy, though obtained in pursuance of a *composition* with his creditors, including the creditor of the former firm, while it relieves him from his obligation to his former partner to pay the firm debt, does not discharge such former partner from liability for the unpaid balance of such debt; and a new promise by the bank-

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1879. The cases will probably be reported in 10 or 11 Otto.

[2] From Hon. John H. Stewart, Reporter; to appear in 32 N. J. Eq. Reports.

[3] From E. L. De Witt, Esq., Reporter; to appear in 35 Ohio St. Reports.

[4] From Hon. N. L. Freeman, Reporter; to appear in 95 Illinois Reports.

[5] From Hon. O. M. Conover, Reporter; to appear in 48 or 49 Wis. Reports.

rupt to his co-debtor, made pending the bankruptcy proceedings or afterwards, to pay such balance, is binding: *Hill* v. *Trainer*, 49 Wis.

Writ of Error—Substitution of Assignee.—After an adjudication in bankruptcy, the assignee of the bankrupt is the proper party to bring a writ of error to reverse a decree against the bankrupt, and he alone can do it, and where the writ has been sued out before by the bankrupt, his assignee, after the adjudication, may be substituted as a party, and prosecute the writ of error in his name: *Jenkins* v. *Greenbaum*, 95 Ills.

BILLS AND NOTES. See *Husband and Wife.*

Place of Payment—Address of Drawee on Bill—Protest.—Where a bill of exchange is directed to a drawee at a particular place and is accepted by him without explanation or condition, such place is the place of payment, although the drawee resides elsewhere; *Cox* v. *National Bank of N. Y.*, S. C. U. S., October Term 1879.

It makes no difference in this respect, that the place is a city, and that no mention is made of any dwelling or place of business where the bill should be presented; *Id.*

After due endeavor and failure to find the acceptor or his place of business, a protest made at such city at the only place where the acceptor was known to transact business is sufficient; *Id.*

Interest—Days of Grace —On mere instalments of *interest*, the debtor is not entitled to days of grace: *Macloon* v. *Smith*, 49 Wis.

CONFLICT OF LAWS. See *United States Courts.*

CONSTITUTIONAL LAW.

Municipal Corporation—Right to maintain Wharves on navigable Waters and collect Wharfage —A municipal corporation, owning improved wharves and other artificial means which it has provided and maintains, at its own cost, for the benefit of those engaged in commerce upon the public navigable waters of the United States, is not prohibited by the national constitution from charging and collecting from those using its wharves and facilities, such reasonable fees as will fairly remunerate it for the use of the property. *Packet Co.* v. *Keokuk*, 95 U. S. 88, affirmed: *N. W. Union Packet Co.* v. *St. Louis*, S. C. U. S., October Term 1879.

CORPORATION. See *Taxation.*

Answer by—Acts of De facto Officers—Determination of validity of Election in collateral Suit.—When a change occurs in the officers of a corporation between the time it is brought into court and the time when its answer is filed, the answer must be filed by the persons who are officers at the time of the filing: *The Mechanics' National Bank of Newark* v. *The H. C. Burnett Manufacturing Company*, 32 N. J. Eq.

The acts of the *de facto* officers of a corporation are valid, so far, at least, as they create rights in favor of third persons: *Id.*

A *de facto* officer is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law: *Id.*

It is no defence to a suit brought by the *de facto* officers of a corporation that they were not legally elected: *Id.*

A court of equity has no authority to determine the validity of the

election of the officers of a private corporation, and pronounce judgment of amotion, but when the question of the validity of such an election necessarily arises in the determination of a suit properly cognisable by a court of equity, it will determine it, as it would any other question of law or fact necessary to be decided to settle the rights of the parties: *Id.*

Criminal Law.

Evidence—Dying Declarations.—The general rule of evidence is, that dying declarations are admissible only when the death of the declarant is the subject of the charge, and the circumstances of the death are the subject of the dying declarations: *The State of Ohio* v. *Harper*, 35 Ohio St.

Forgery—Evidence—Presumption of Intent—Flight of Accused—Comments of State's Attorney outside of the Evidence.—It is necessary to prove, on the trial of one indicted for forgery, an attempt to defraud the person named in the indictment as intended to be defrauded. This intent may be clearly shown by proof of uttering the forged instrument, and if not passed, circumstantial evidence: *Fox* v. *The People*, 95 Ill.

Evidence of statements or admissions in reference to the note for the forgery of which the person accused is being tried are admissible, but what he has said of another note said to have been forged is not admissible to prove the charge on which he is being tried: *Id.*

There is no presumption of law of an intent to defraud from proof that the accused has actually forged a note on another person when he has not uttered the same, but this is a question of fact for the jury to find from the evidence, as, his possession of the same and the surrounding circumstances. The possession of the forged paper, while evidence tending to prove a fraudulent intent, is not conclusive. The circumstances may clearly repel any presumption of guilt: *Id.*

It is error to instruct a jury, on the trial of one for an alleged crime, that his flight is evidence of guilt. It is only evidence tending to prove guilt. Nor should the court tell the jury that if flight was proved, it must be satisfactorily explained consistent with the innocence of the accused. This might be understood as requiring him to prove an innocent purpose beyond doubt: *Id.*

It is the duty of the court, on the trial of one when his life or liberty is involved, to stop the state's attorney in his closing argument, when he assumes facts not proved and urges them for a conviction. Such conduct is unfair to the accused, and he should be protected by the court. When such unfairness is gross, a judgment of conviction, in a doubtful case, should be reversed: *Id.*

Debtor and Creditor. See *Sheriff's Sale.*

Divorce.

Desertion of Wife—Willingness to return.—If a wife deserts without cause, and afterwards realizes that she has acted foolishly, and would return if the way was opened for her, but her husband refrains from doing anything to induce her to return, for the purpose of making her absence a ground of divorce, her desertion is not obstinate: *Trall* v. *Trall*, 32 N J. Eq.

But a husband is not bound to attempt to induce his wife to return, when it is clear any effort in that direction will be unavailing: *Id.*

EQUITABLE CONVERSION. See *Partnership.*

EQUITY. See *Laches; Municipal Corporations; Trust; Usury.*

Election of Remedy—Court of Equity Taking Jurisdiction will give Complete Remedy.—To a foreclosure suit, a creditor, claiming, by his attachment, a lien on the debt, was made a party, and an injunction staying his proceedings at law granted. After a sale of the premises under the foreclosure and payment of the money into court: *Held* that, his motion to dissolve the injunction and proceed at law must be denied, and that he must litigate his claim in this court: *Pine* v. *Shannon*, 32 N. J. Eq.

ERRORS AND APPEALS. See *Bankruptcy.*

Supersedeas Bond—Fraud in procuring—Setting aside—New Bond.—Where the approval of a supersedeas bond upon appeal, is obtained by fraud, the Appellate Court will, upon discovery and proof of the fraud, set aside the bond: *Florida Central Railroad* v. *Schulte*, S. C. U. S., Oct. Term 1879.

If the appellant was a party to the fraud, or concealed from the justice approving the bond material facts in reference to its procurement, a new bond will be refused: *Id*

ESTOPPEL. See *Landlord and Tenant.*

EVIDENCE. See *Criminal Law; Limitations, Statute of.*

Marriage—Legitimacy.—On a question of legitimacy, a marriage certificate proved to be genuine, and, produced by and from the custody of the mother of the person whose legitimacy is in question, is competent evidence and strongly corroborative proof of the alleged marriage: *Gaines* v. *Green Pond Iron Mining Co.*, 32 N. J. Eq.

Where the legitimacy of a person is in issue, an acknowledgment of him by his parents' kinsmen as their relation may be given in evidence as evidence of the marriage which must have preceded his birth if lawful: *Id.*

Explanation of Written Instruments by Parol—Offers of Compromise—Admissions.—Where the effect of a written instrument collaterally introduced in evidence, depends not merely on its construction and meaning, but also upon extrinsic facts and circumstances, the inferences to be drawn from it are inferences of fact and open to explanation by parol evidence: *West* v. *Smith*, S. C. U. S., Oct. Term 1879.

Offers of compromise, as a general rule, are not admissible against the party making the offer, but if admitted they are open to explanation whether made by oral or written communication: *Id.*

FIXTURE. See *Landlord and Tenant.*

FORFEITURE. See *Insurance.*

FORMER ADJUDICATION.

Foreclosure suit—Lien Creditors proving Claims before Master—Effect of Decree.—In an action to foreclose a mortgage, the lienholders were so numerous that it was impracticable to bring them all before the court,

and some of them were allowed to prosecute for the benefit of all; and a special master having been appointed, with instruction to report the names of the lienholders, and the amount due each, those who appeared before the master and proved their claims are as much bound by a judgment or order affecting the subject-matter of the suit as if they had been formally made parties: *Carpenter* v. *Canal Co.*, 35 Ohio St.

GARNISHMENT.

Municipal Corporation—County order in Clerk's Hands not attachable.—A municipal corporation (in this case a county) is not subject to garnishment; and one who holds property of a debtor, merely as agent of such a corporation, cannot be garnished in respect thereof: *Merrell* v. *Campbell*, 49 Wis.

Even if a county were liable to garnishment, the process would not reach an undelivered county order in favor of the debtor, in the county clerk's hands: *Id.*

A delivery of such an order by the clerk to the sheriff, upon service of process of garnishment, does not bind the county and subject it to garnishment: *Id.*

HIGHWAY.

Sidewalk—Obligation of Town to keep in Repair.—In cities of this state, the use, for a series of years, by the people travelling on foot along a public highway, of a part of such highway as a sidewalk or foot-path, on one or both sides of the carriage-way, constitutes such path or walk a portion of the "travelled part" of such highway, which the city is bound to keep in repair and in safe condition for such use, and renders the city liable for injuries resulting from a neglect of that duty: *James* v. *City of Portage*, 48 or 49 Wis.

Injury to abutting Property—Title by adverse Possession—Interest.—In an action for an injury to abutting property by reason of the construction of a railroad on a public street or highway, the plaintiff's title may be established by proof of adverse possession: *The Lawrence Railroad Co.* v. *Cobb*, 35 Ohio St.

In awarding damages for an injury resulting from a tort, compensation in the nature of interest may be included: *Id.*

HUSBAND AND WIFE. See *Divorce; Evidence; Limitations, Statute of.*

Promissory note of Wife as Surety—Liability of Separate Estate—Equity.—A married woman, having a separate estate, may charge the same, in equity, by the execution of a promissory note as surety for her husband or another: *Williams* v. *Urmston*, 35 Ohio St.

Where a married woman, having a separate estate, executes a promissory note as surety for the principal maker, a presumption arises that she thereby intends to charge her separate estate with its payment; and a court of equity will carry such intention into effect by subjecting such estate to the payment of the debt, in the mode prescribed by the statute: *Levi* v. *Earl*, 30 Ohio St. 147, and *Rice* v. *Railroad*, 32 Id. 380, in so far as they conflict with the decision in this case, are overruled: *Id.*

INFANT.

Liability of Father for Support.—A father is bound to support his

infant child, if of sufficient ability, even though the child may have an ample estate of its own, but if the father is not able to support his child, or not able to support it according to its station and expectations, a court of equity may appropriate its own estate to its support: *Stephens* v. *Howard's Executors*, 32 N. J. Eq.

Insurance.

Waiver of Proof of Loss—Negligence of Insured.—A policy required immediate notice, and proof of loss within thirty days. The notice was given, and a protest made out on the day the loss occurred, which was afterward handed to the insurer's adjuster, when he came to investigate the loss, who made the objection that it did not state the cause of the loss, but went on and made a full investigation, after which he told the insured that he did not think the insurer would pay, as he had shown no cause of loss, and that it must have been from unseaworthiness of the boat or negligence; but promised that after he made his report he would write and inform him whether the insurer would pay: and he reported all the facts, whereupon the insurer decided that it was not liable, and so informed the agents, through whom the insurance was effected, without stating the ground of the decision, and the adjuster did not write to the insured as he had promised: *Held*, that, whether there had been a waiver of proof of loss by the insurer, was properly left to the jury, under appropriate instructions: *The Enterprise Insurance Co.* v. *Parisot*, 35 Ohio St.

Where a vessel is lost by a peril insured against, the insurer will be liable, although the loss might have been avoided by the exercise of proper care on the part of those in charge of the vessel at the time of the loss: *Id.*

Interest. See *Bills and Notes; Highways; Usury.*

Intoxicating Liquors.

Evidence—Purchase from others than Defendant—Damages for Death.—In an action under the Act of 1870 (67 Ohio L. 102), to recover damages to means of support by reason of intoxication, caused by liquors alleged to have been sold continuously, during a period of three years, to a person in the habit of getting intoxicated, the defendant may offer evidence to show that, during the same period, such person became intoxicated by liquors, which he purchased of other persons: *Kirchner* v. *Myers*, 35 Ohio St.

Under said Act of 1870, for injury to means of support in consequence of intoxication, which caused the death of the intoxicated person, damages resulting from the death cannot be recovered: *Davis* v. *Justice*, 31 Ohio St. 359, approved: *Id.*

Laches.

Equitable Right—Mere Delay.—Mere delay alone, short of the period fixed as a bar by the Statute of Limitations, will not preclude the assertion of an equitable right. Where the adverse party is not lulled into security by the delay, or prejudiced thereby, the defence of laches cannot be considered: *Gibbons* v. *Hoag*, 95 Ill.

LANDLORD AND TENANT.

Building on another's Land—Estoppel by Lease—Fixture—Mortgage.—A mortgage was given in January 1872. In November 1873, the defendant, a son of the mortgagor, moved a frame building upon the premises, where he placed it on a stone foundation, which he built, and afterwards used it as a shop and dwelling. The premises were sold, under foreclosure, in December 1877, and bought by the mortgagee, whereupon the defendant agreed to pay rent for the house and lot, and did so from January to December 1878. In January 1879, proceedings were begun to remove him for non-payment of rent, and he then claimed that the building belonged to him, and asserted his right to remove it as a trade fixture. He was restrained from doing so by injunction. *Held*, without determining the question whether such a building is, as between mortgagor and mortgagee, a trade fixture, that the defendant is, by leasing such building after the foreclosure sale, and paying rent therefor, estopped from setting up title thereto in himself: *Betts* v. *Wurth*, 32 N. J. Eq.

LIMITATIONS, STATUTE OF.

Coverture—Proof of by Cohabitation.—Where coverture is relied on to save an action from the bar of the Statute of Limitations, the marriage may be shown by proof of cohabitation as husband and wife: *Lawrence Railroad Co.* v. *Cobb*, 35 Ohio St.

MARRIAGE. See *Evidence.*

MINES. See *Waste.*

License to dig Ore—Revocation of.—Abandonment.—A contract giving a party an exclusive right to dig ore in certain lands, no estate or interest in the land being granted, is a license and not a grant or demise: *The East Jersey Iron Co.* v. *Wright*, 32 N. J. Eq.

Unless coupled with an interest, or an equity has been created by acts done in pursuance of a license, a license is always subject to revocation in either of the following methods: (1), by the will of the licensor; (2), by the death of either of the parties, or (3), by a conveyance of the land upon which it was intended to operate: *Id.*

Where a mining license is granted by a licensor, for the purpose of having his lands explored and their mineral resources developed, and it contains a provision that if the licensee concludes to abandon digging ore, he shall notify the licensor, if the licensee, after making an opening in the lands and finding a large deposit of ore, does in fact abandon the enterprise, because the ore is comparatively valueless, he will be held to have abandoned the mine, though he gave no formal notice: *Id.*

MORTGAGE. See *Landlord and Tenant.*

Recital of Unrecorded Mortgage in Deed—Notice to Judgment Creditors.—An unrecorded mortgage was excepted, by express words, in a subsequent conveyance of the lands by the mortgagor, and that deed recorded. Afterwards the mortgage was recorded: *Held*, that such exception was constructive notice to judgment-creditors of the grantee, whose judgments were recovered before the mortgage was recorded: *Westervelt* v. *Wyckoff*, 32 N. J. Eq

Release of—Effect as to Subsequent Encumbrance.—If a prior mortgagee releases part of the mortgaged premises, to the prejudice of a subsequent encumbrancer or purchaser, with notice of such subsequent mortgage or deed, his release will operate as a discharge of his lien, to the extent of the value of the land released: *Cogswell* v. *Stout*, 32 N. J. Eq.

As a general rule, a mortgagee is not chargeable with notice, by construction, of rights acquired in the mortgaged premises subsequent to the execution of his mortgage: *Id.*

MUNICIPAL CORPORATION. See *Constitutional Law; Highway; Payment.*

Contracts for Work to be paid for by Property Owners—When unreasonable will be Relieved against.—Where a city charter does not require contracts for building sidewalks at the expense of the adjoining lots to be let to the lowest bidder after advertising for proposals, although such contracts may be made by private agreement with the city, they must be fairly made, at reasonable prices, with due regard to the lot owner's interests, or equity will relieve against them: *Cook* v. *City of Racine*, 49 Wis.

NATIONAL BANKS.

Taxation—Valuation of Shares—Unequal Taxation.—The provision of the National Bank Law, that state taxation on the shares of the banks shall not be at a greater rate than is assessed on other moneyed capital in the hands of citizens of the state, has reference to the entire process of assessment, and includes the valuation of the shares as well as the ratio of percentage charged on such valuation: *The People, ex rel. Williams* v. *Weaver et al.*, S. C. U. S., Oct. Term 1879.

The statute of New York of 1866, which permits a debtor to deduct the amount of his debts from the valuation of all his personal property, including moneyed capital, except his bank shares, taxes those shares at a greater rate than other moneyed capital, and is therefore void as to the shares of national banks: *Id.*

Taxation—Unequal Taxation through Variation in Mode of Assessment—Remedy in Equity.—Although the statutes of a state provide for the valuation of all moneyed capital for the purposes of taxation, at its true cash value, including shares of the national banks, the systematic and intentional valuation of all other moneyed capital by the taxing officers far below its true value, while national bank shares are assessed at their full value, is a violation of the Act of Congress, which prescribes the rule by which those shares shall be taxed by state authority: *Pelton* v. *The Commercial National Bank*, S. C. U. S., Oct. Term 1879.

In such a case, on a payment or tender of the sum which the bank shares ought to pay under the rule established by the Act of Congress, a court of equity will enjoin the state authorities from collecting the remainder: *Id.*

NEGLIGENCE. See *Insurance.*

What Questions for Jury.—What is proper care to be exercised by a plaintiff suing for an injury caused by negligence is a question of law, but whether such care, which is ordinary care, has in fact been exercised

in the conduct of a party in a given case, is a question of fact, which may be properly submitted to the jury: *Stratton* v. *Centennial City Horse Railway Co.*, 95 Ill.

NOTICE. See *Mortgage.*

PARTNERSHIP. See *Bankruptcy.*

Real Estate—Equitable Conversion.—By articles of partnership, M. and A. stipulated that at the end of three months after the death of either of them, a valuation of all their partnership assets and property, including real estate, should be made, according to the amount of capital invested; and that the survivor should have one year thereafter to take and pay the value of such share to the legal representatives of the decedent. One partner (A.) died intestate: *Held*, that M. was entitled to specific performance of the contract, which of itself constituted an equitable conversion of the real estate, and that the proceeds must be divided among the intestate's next of kin: *Maddock* v. *Astbury*, 32 N. J. Eq.

PAYMENT.

When not Voluntary—Assessment for Municipal Purposes—Fraud.—Only one-half of the cost of laying certain pipes being chargeable by law to plaintiff's lot, if plaintiff paid the whole of such cost (included in the taxes charged against her upon the city tax roll), not knowing what the actual cost was, and under a belief, caused by fraudulent misrepresentations of the city officers, that she was charged with only half the cost, this is not a *voluntary* payment: *Harrison* v. *City of Milwaukee*, 49 Wis.

If the city charter gave plaintiff the right to appeal from the assessment to the circuit court within a specified time, that remedy cannot be held *exclusive* so as to prevent a recovery by action brought in the circuit court, of the excess in the amount paid in ignorance of the facts, through fraudulent misrepresentations of the officers: *Id.*

PLEADING. See *Practice.*

POSSESSION. See *Highway.*

Occupancy of Part— When Notice.—The actual possession of a part of a tract of land by a purchaser thereof, before and at the time of the execution of a deed of trust by his vendor, upon the entire tract, is notice to the party taking such encumbrance of the rights of the purchaser: *Small* v. *Stagg*, 95 Ills.

PRACTICE.

Filing additional Pleas—Diligence—Continuance.—Where leave is asked to file additional pleas eighteen months after the issues have been made up, and on the eve of the trial, there will be no abuse of discretion or error in refusing the same, especially where no affidavit is filed, showing a reasonable excuse for the delay: *Fisher* v. *Greene*, 95 Ill.

Where a defendant, after filing the general issue, and a continuance of the cause has been had, discovers that he has a substantial defence, not admissible under the general issue, he should, at the earliest convenient day, ask for special leave of the court to file an additional plea,

so as not to take the plaintiff by surprise or delay the business of the court: *Id.*

Where due diligence has not been used to procure the deposition of a party or witness, a motion for a continuance, based on the fact that such deposition has not been returned, is properly overruled: *Id.*

PUBLIC SCHOOLS. See *Trust.*

SHERIFF'S SALE.

Fairness of—Not Impeachable by Fraudulent Debtor.—A debtor who has conveyed his property in order to defraud his creditors, has no standing in this court to question the fairness or adequacy of price, obtained at a public sale of such premises under a creditor's bill to reach such property; *Guest* v. *Barton*, 32 N. J. Eq.

SURETY. See *Husband and Wife.*

Concealment by Creditor of Material Fact—Fraud.—If one who contemplates becoming a surety to another for a third person, applies to the person to whom the security is to be given, for information as to the nature, extent and risk of the obligation, or the circumstances, condition or character of such third person, while the person so applied to may refuse to give such information, yet, if he undertakes to give it, he is bound to disclose every material fact within his knowledge affecting the proposed liability; and if he conceals any facts, unknown to the proposed surety, which, if known, would have deterred him from becoming surety (where the latter has not the present means of ascertaining the fact, or where, though he has such means, artifice is used to mislead him or to throw him off his guard), this is a fraud which will relieve the surety from his obligation. And this is especially so, where the surety becomes such at the request of the person to whom the security is given: *Remington Sewing Machine Co.* v. *Kezertee*, 49 Wis.

TAXATION. See *National Banks.*

Tax on Corporations—Act of 1866.—The tax on interest, paid by corporations under section 122 of the Internal Revenue Law, as amended by the Act of 1866, is an excise tax on the business of these corporations, to be paid by them out of their earnings, income and profits: *Michigan Central Railroad Co.* v. *Slack*, S. C. U. S., Oct. Term 1879.

In order to secure payment of this tax, it was laid by Congress on the subjects to which these earnings were applied in the usual course of business of such corporations, namely, dividends, interest on funded debt, construction, or some reserve fund held by the company: *Id.*

Such a tax is not invalidated by the provision that the amount of it may be withheld from the dividend, or interest going to the stockholder, or bondholder, though the latter be a citizen or subject of a foreign government, with no residence in this country: *Id.*

TRESPASS.

Acting under lawful Authority, but in excess—When Trespasser ab initio.—According to the general tendency of modern decisions, one who does an act under a lawful authority will not be rendered a trespasser *ab initio* by subsequent irregularities, except where he does or

consents to some positive act, which goes to show that the original lawful act was done with an unlawful purpose: *Grafton* v. *Carmichael.* 48 or 49 Wis.

Accordingly, the plaintiff, in an attachment suit in justice's court, may justify a taking of defendant's goods under a valid attachment, although the subsequent judgment against the attachment defendant, and sale of the goods on execution, are invalid by reason of a subsequent failure of the justice to cause notice to such defendant to be posted, &c., as required by law where personal service of the writ is not made; and this though such attachment plaintiff received a portion of the money made on the execution: *Id.*

Trust

Public School Trust—Violation of Trust—Injunction at Suit of Tax-payer.—A lease of a public school-house for the purpose of having a private or select school taught therein for a term of weeks, is in violation of the trust; and such use of the school-house may be restrained at the suit of a resident tax-payer of the district: *Weir* v. *Day*, 35 Ohio St.

United States Courts.

Decision of State Court—When not Binding.—The federal courts are not bound by decisions of state courts upon questions of general commercial law: *Oates* v. *The Bank*, S. C. U. S., Oct. Term 1879.

Usury.

Relief in Equity—Terms on which Granted.—The practice in equity has always allowed the complainant to compel a discovery of the particulars of usurious transactions on the conditions only, that he waives the forfeiture of the statutory penalty and submits to pay the debt with legal interest, and no greater degree of strictness in setting up usury will be required in an answer, but it may be stated generally, and need not be more specific than is required in a bill: *Jenkins* v. *Greenbaum et al.*, 95 Ill.

Vendor and Vendee.

Vendor's Lien—Assignment.—A vendor's lien is a right that can only be enforced by the vendor himself, and is not assignable: *Small* v. *Stagg*, 95 Ill.

Waiver. See *Insurance.*

Waste.

Opening old Mines by Tenant for Life.—Where there has been diggings by the then owner of the fee for minerals for the manufacture of copperas and Venetian red and Spanish brown, which diggings had been discontinued for about seventy years, and there had been explorations or excavations by such owner of the fee for the ore as iron ore, but, it proving valueless, the pursuit was thereupon abandoned and no further working done. *Held*, that, the tenant for life had no right to mine for ore, and that such mining was consequently waste: *Gaines* v. *Green Pond Iron Mining Co.*, 32 N. J. Eq.

Wharf. See *Constitutional Law.*